THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 23102 OF 2005

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DATED: 04.08.2006

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Between:

M/S.Chetana Laminates Pvt.Ltd,, rep. by its Managing Director, S.G.Prashant Kumar

... Petitioner

And:

State Financial Corporation, rep. by its General Manager and another

... Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 23102 OF 2005

ORAL ORDER:

The petitioner assails the action of the 1st respondent in selling the industrial unit-M/S.Acro Industries, C-18/1,IDA, Uppal, Hyderabad (to the 2nd and 3rd respondents herein). Admittedly the industrial unit was offered by the petitioner as a collateral security to a loan obtained by it for capital expenses and working capital requirements of the petitioner industry, in 1999.

The petitioner availed a loan of Rs.49,14,160/- from the 1st respondent-Corporation. In February 2001 the 1st respondent addressed the petitioner calling upon it to clear the principal arrears of Rs.3.64 lakhs and interest arrears of Rs.7.10 lakhs. In March 2001 there was a re-fixation of the term loan availed. In June 2001 the 1st respondent advised the petitioner to clear the principal arrears of Rs.5.09 lakhs and interest arrears of Rs.8.30 lakhs. Another letter was addressed in August 2001 calling upon the petitioner to clear principal arrears of Rs.7.28 lakhs and interest arrears of Rs.10.65 lakhs. The petitioner appears to have tendered a cheque for Rs.2.00 lakhs on 27-09-2001, which was however dishonoured. A notice was therefore issued on 12-10-2001 bringing the fact of dishonour of the cheque, to the notice of the petitioner. The petitioner thereupon paid Rs.1.50 lakhs by way of a demand draft in March 2002.

In June 2002 the petitioner represented to the 1st respondent seeking installments for clearing the interest and requesting re-scheduling of the principal amount. In July 2002 the 1st respondent advised the petitioner that it should ahhere to the already determined schedule for clearing the interest component. The current liability, as on July 2002 were also intimated to the petitioner. In August 2002 on the petitioner committing a default even after repeated sensitization as to its obligation, was advised to clear the total interest arrears of Rs.12.35 lakhs. On 08-09-2002 the 1st respondent-corporation recalled the total outstanding amount in the loan account, in terms of agreement between the parties. In December-2002 the 1st respondent issued a letter to the surety- M/S.Acro Industries, advising the said individual to clear the arrears. On 07-03-2003 the unit was seized. The seizure was however recalled on 27-03-2003 on payment of Rs.3 lakhs coupled with a promise to clear the balance amount by 31-03-2003. This dead line was also breached and the arrears as on that day mounted further.

On 13-06-2003 the 1st respondent yet again addressed the petitioner calling upon it to clear the principal arrears of Rs.5.07 lakhs and interest arrears of Rs.11.41 lakhs. Another reminder was issued to the same effect on 31-06-2003 and on 07-08-2003 the 1st respondent again recalled the total outstanding amount of Rs.63.84 lakhs in the loan account. On 27-08-2003 the petitioner tendered a meager amount of Rs.2 lakhs by way of a demand draft coupled with eight(8) post-dated cheques commencing from 01-09-2003 up to 22-11-2003 for Rs.1 lakh each and during this period paid only Rs.75,000/- as against the post-dated cheques for Rs.8 lakhs. One of the cheques (the very first in fact), dated.10-09-2003, issued by the

petitioner for Rs.1.00 lakh was dishonoured.

On 23-10-2003 the petitioner was intimated to attend a review meeting. The petitioner's representative did not turn up. On 20-01-2004 the petitioner submitted another communication of promise to clear the entire interest arrears by 05-02-2004 and kept up the promise to the extent of Rs.1 lakh as against a huge amount outstanding.

The respondents now on a back foot, having granted sufficient time to the petitioner-Company, addressed a series of letters thereafter to the petitioner to clear the outstanding amount vide letters dated.02-06-2004, 07-06-2004 and 20-08-2004.

In August 2004 the 1st respondent finally decided to act, recognized the existence of Sec.29 of the State Financial Corporation Act (for short "the Act") and decided to proceed under the said provision. The sale was notified in two leading dailies, one English and one Telugu on 05-07-2004. Even thereafter another schedule was issued to the petitioner for clearing the arrears of principal and interest, by a communication dated.09-08-2004.

The petitioner paid Rs.1.5 lakh during the period 13-08-2004 to 31-10-2004. In August 2004 the petitioner requested the 1st respondent-Corporation to waive the total interest component and to consider a One Time Settlement (OTS). In response thereto, on 31-08-2004 the 1st respondent advised the petitioner to attend a meeting for considering OTS. However, there was no response from the petitioner. Thereupon the 1st respondent again addressed the petitioner on 14-09-2004 informing the petitioner that its' representative did not attend the review meeting and advised the petitioner to clear the principal arrears of Rs.13.55 lakhs and interest arrears of Rs.16.07 lakhs

within seven (7) days duly intimating the petitioner that failure would result in an action under Sec.29 of the Act.

In January 2005 the petitioner again promised to pay Rs.5 to 6 lakhs. Sale of the property constituting the collateral security was again notified in the "Economic Times" and "Andhra Jyothi"(a telugu daily) on 02-02-2005. In March-2005 the petitioner tendered a cheque for Rs.2 lakhs again requesting reschedule of the loan amount reducing the rate of interest. In response to this letter, the 1st respondent replied by a letter dated.21-03-2005 declining to accommodate the petitioner any further and intimating that action was already initiated under Sec.29 of the Act, but again calling upon the petitioner to pay up the arrears. On 04-05-2005 another letter was written by the 1st respondent to the petitioner to clear the principal arrears of Rs.18.63 lakhs and interest arrears of Rs.8.06 lakhs (including the benefits given on amounts already paid, plus(+) some subsidy amount received from the State Government). Reminders were issued by the 1st respondent to the petitioner on 25-05-2005 and 16-06-2005. Again (for the 3rd or the 4th time), the entire outstanding loan of Rs.57.21 lakhs was recalled into the loan account (a consolidation process).

The property was yet again advertised for sale in the "Economic Times" and "Eenadu" on 30-06-2005 and 05-07-2005. On 25-07-2005 the petitioner requested the 1st respondent to withdraw the recovery action and consider OTS, promising to pay Rs.4 lakhs in three to four days time. The petitioner paid a mere Rs.2 lakhs on 29-07-2005. On 02-08-2005 the assets i.e., the land and machinery of the Company, were valued at about Rs.95 lakhs.

Pursuant to the paper notification on 30-06-2005 and 05-

07-2005 sealed tenders were received from the interested bidders and the sale was conducted on 05-10-2005. There were eight (8) bidders to the property. As the highest offer received was Rs.91 lakhs from respondent Nos.2 and 3, the offer of these respondents at Rs.91 lakhs was displayed in the notice board of 1st respondent-Office notifying 11-10-2005, as a date by which a better offer could be received. On 14-10-2005 the petitioner requested for a statement of the account. This was furnished.

The sale of the property pursuant to the auction held on 05-10-2005 was approved by the competent authority of the 1st respondent-Corporation on 13-10-2005. Even thereafter the petitioner continued to make representations to the 1st respondent including for waiver of the total interest outstanding under OTS and with a further promise to clear the principal amount of debt. On 15-10-2005 the sale confirmation letter was issued in favour of the highest bidders. The petitioner's representations thereafter were not acceded to as the sale was already held and confirmed.

The sale of the collateral security offered by the petitioner and which was confirmed in favour of the highest bidder-2nd and 3rd respondents herein is assailed by the petitioner on several grounds. The principal among the grounds is that the petitioner's collateral property was put to sale without notice; that the 1st respondent failed to consider its repeated requests for OTS; and that the industrial unit was sold for a value less than the estimated value.

None of the aforesaid contentions merit acceptance by this Court. Firstly the petitioner had abundant notice. The number of letters exchanged between the 1st respondent and the petitioner

on the outstanding liability of the petitioner have already been chronicled hereinabove and mark testimony to the generous opportunity offered to the petitioner, to clear the dues. The petitioner was also aware of the consequences of a persistent conduct of default in the repayment of its loan obligations. The chronic nature of the default is overwhelmingly established from the facts chronicled above. The petitioner cannot expect nor claim an OTS as of right. The loan installments were re-scheduled more than once and that is what the 1st respondent-Corporation thought, in the spectrum of its available discretion, to be the appropriate measure of accommodation of the petitioner's financial stringency.

It is not the province of this Court to sit in the judgment over the administrative or financial discretion of the 1st respondent-Corporation. The 1st respondent-Corporation is statutorily consecrated a wide measure of latitude of administrative discretion to run its affairs. The 1st respondent Corporation is a public authority and is complemented by a managerial expertise to run its affairs without paternal oversight from the judicial branch.

The chronology of facts adverted to above establish without a doubt, that more than reasonable latitude was given by the 1st respondent-Corporation to the petitioner to clear up the debts.

The learned counsel for the petitioner was at great pains to inform this court that the petitioner is a hard working and committed entrepreneur who endeavoured to his utmost to establish and run an industry. It is not the province of this Court to certify the entrepreneurial ability of the petitioner.

The market place is a harsh and adult world and only the

fittest survive. There is no law, which confers a jurisdiction on this Court under Article.226 to issue directives to the 1st respondent-Corporation to accommodate further, a class of industrialists such as a petitioner. No such law, legal instrument or principle of law, is shown to this Court which warrants a departure from the established norms and principles structuring the contours of judicial scrutiny. Judicial interdiction is justified only against perverse exercise of discretion by an executive agency. On an analysis of the facts in this case, no perversity is discernible.

The other contention urged on behalf of the petitioner is that the industrial unit was sold for a value much less than the estimated value. This is not established. The unit was estimated (land and machinery) at around Rs.95 lakhs. The unit was in fact sold for Rs.91 lakhs, a marginal difference and at any rate for a competing value fetched by a public and transparent process of sale. The margin is not so gross as to deserve the appellation of arbitrary and gross under-valuation, within the spectrum of a review under Article.226 of the Constitution.

The learned counsel for the petitioner must however be complemented for a very articulate and persuasive presentation of the petitioner's case.

For the aforesaid reasons there are no merits, warranting interference. The writ petition is accordingly dismissed.

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GODA RAGHURAM,J

4TH AUGUST 2006
PVSN/*TSNR
CC in 3 days
Pvsn/Tsnr